

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

XCOAL ENERGY & RESOURCES,
Plaintiff/
Counter-Claim Defendant,
v.
ACCIAIERIE D'ITALIA S.P.A.,
Defendant/
Counter-Claim Plaintiff,
JAVELIN GLOBAL COMMODITIES
(UK) LTD.,
Intervenor/Plaintiff.

CIV. ACT. NO. 1:23-cv-361-TFM-C

MEMORANDUM OPINION AND ORDER

On February 7, 2025, the Magistrate Judge entered a report and recommendation addressed two separate issues. *See* Doc. 153. Specifically, the Report and Recommendation (“R&R”) addressed two pending motions: (1) the Motion to Dismiss and In The Alternative Motion for Judgment on the Pleadings (Doc. 119) filed by the Plaintiff/Counter-Claim Defendant, Xcoal Energy and Resources (“Xcoal”), against Intervenor/Plaintiff, Javelin Global Commodities, (UK) LTD. (“Javelin”), and (2) the Motion to Stay and Compel Arbitration (Doc. 126) filed by Xcoal against the Defendant/Counter-Claim Plaintiff, Acciaierie D’Italia S.P.A. (“ADI”). Objections were filed by ADI as to the R&R on the second motion (*see* Doc. 154), XCoal timely filed its response to ADI’s objections (*see* Doc. 156), and ADI filed its reply brief on the objections (*see* Doc. 159). No objections were filed as they related to XCoal’s motion to dismiss/alternative motion for judgment on the pleadings as it related to Javelin.

On April 28, 2025, XCoal and ADI notified the Court they had reached a resolution as to

the claims between them and through their joint motion to dismiss identified motions and pleadings that had been rendered moot. *See* Doc. 173 at 3. In footnote 1 they stated “[t]he entirety of mooted motions and associated pleadings are as follows:”

...

153	REPORT AND RECOMMENDATION, recommending that the 119 Motion to Dismiss and in the Alternative Motion for Judgment on the Pleadings be DENIED; and that the 126 Motion to Stay and Compel Arbitration be GRANTED. Objections to R&R due 14 days from the date of service of this document. Signed by Magistrate Judge William E. Cassady on 2/7/2025. (mab) (Entered: 02/07/2025)
-----	--

...

Doc. 173 at 3, n. 1. Therefore, the Court terminated the pending R&R on May 2, 2025 in accordance with the joint motion to dismiss. *See* Doc. 175. However, after a review of the pending motions and docket sheet, the Court later determined that the R&R was terminated prematurely because it also dealt with the motion to dismiss relating to XCoal and Javelin which was not mooted by the settlement between XCoal and ADI. Therefore, the Court had the R&R reinstated to address the remaining motion. *See* Doc. 200.

Turning to the remaining motion addressed in the R&R, the Motion to Dismiss and In The Alternative Motion for Judgment on the Pleadings (Doc. 119), there were no objections filed by either XCoal or Javelin as to this portion of the R&R, so it does not receive a *de novo* review. After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed to the only issues that remain, the Report and Recommendation (Doc. 153) of the Magistrate Judge is **ADOPTED**. Accordingly, the Motion to Dismiss and In The Alternative Motion for Judgment on the Pleadings (Doc. 119) filed Xcoal against Javelin is **DENIED**. The Motion to Stay and Compel Arbitration (Doc. 126) is **DENIED as moot** based upon the settlement between XCoal and ADI and their prior representation that the

issue is moot.

This case is **REFERRED BACK** to the Magistrate Judge for further proceedings (*see* Doc. 147).

DONE and **ORDERED** this 30th day of July 2025.

/s/ Terry F. Moorner
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE